

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

EDUARDO LEIVA,)
)
Petitioner,)
)
v.) Case No. CIV-12-342-W
)
WARDEN TRAMMEL,)
)
Respondent.)

REPORT AND RECOMMENDATION

Mr. Eduardo Leiva has filed a petition for habeas relief. Rather than pay the filing fee, Mr. Leiva moved for leave to proceed *in forma pauperis*. The motion indicates that Mr. Leiva has \$4.89 in his draw account and \$85.12 in his savings account, and the filing fee is only \$5.00.¹ Because Mr. Leiva has adequate funds for the filing fee,² the undersigned recommends that the Court: (1) deny the motion for leave to proceed *in forma pauperis*, (2) order payment of the filing fee within 21 days,³ and (3) dismiss the action without prejudice if Mr. Leiva fails to timely pay the filing fee or show good cause for the failure to do so. *See* W.D. LCvR 3.3(e).

¹ *See* 28 U.S.C. § 1914(a).

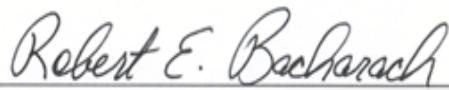
² Oklahoma law governing the statutory savings account expressly allows inmates to withdraw funds from the account to pay fees under 28 U.S.C. § 1911, *et seq.* Okla. Stat. tit. 57 § 549(A)(5); *see also Williams v. Austin*, 890 P.2d 416, 418 (Okla. Ct. App. 1994) (“A prisoner’s savings held by the Department of Corrections may be used to pay fees or costs in filing a civil action.” (citations omitted)).

³ *See* W.D. Okla. LCvR 3.3(e).

The Petitioner is advised of his right to object to this report and recommendation by April 20, 2012. *See* 28 U.S.C. 636(b)(1); Fed. R. Civ. P. 6(d), 72(b)(2). If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Petitioner is further advised that if he does not timely object, he would waive his right to appellate review over a denial of pauper status in the district court. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation terminates the referral.

Entered this 3rd day of April, 2012.



Robert E. Bacharach
United States Magistrate Judge